

Exhibit A



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June 20, 2016

Susan B. Gerson
Assistant Director, FOIA/Privacy Unit
Executive Office for United States Attorneys
Department of Justice
Room 7300, 600 E Street, N.W.
Washington, DC 20530-0001
USAEO.FOIA.Requests@usdoj.gov

VIA ELECTRONIC MAIL

Dear Ms. Gerson:

This letter constitutes a request under the Freedom of Information Act, 5 U.S.C. § 552 and the implementing regulations of the Department of Justice (“Department”), 28 C.F.R. § 16.1 *et seq.* This request is submitted on behalf of the Project on Predatory Student Lending (“PPSL”) of the Legal Services Center of Harvard Law School.

This request relates to *United States ex rel. Washington v. Education Management Corp.*, No. 2:07-cv-461 (W.D. Pa.) (“EDMC litigation”), which was litigated in the United States District Court for the Western District of Pennsylvania and settled by a Settlement Agreement effective November 16, 2015.¹ As detailed below, PPSL seeks records produced to the Department (together with the Attorneys General of California, Florida, Illinois, Indiana, and Minnesota, and Relators Lynntoya Washington and Michael T. Mahoney, “Plaintiffs”) in discovery by the defendants in the EDMC litigation (“Defendants”).²

Background

The EDMC litigation involved allegations that Defendants violated Title IV of the Higher Education Act’s prohibition on the use of incentive compensation by institutions participating in federal student aid programs (“Incentive Compensation Ban”).³ Specifically, the Department alleged that, in order to receive funding through federal student loan and grant programs, Defendants falsely certified that they were in compliance with the Incentive Compensation Ban, when in fact they “created a ‘boiler room’ style sales culture” in which “the sole factor that

¹ Order of Dismissal, *United States ex rel. Washington v. Educ. Mgmt. Corp.*, No. 2:07-cv-461 (W.D. Pa. Dec. 8, 2015).

² The defendants identified in the Settlement Agreement were Education Management Corporation (“EDMC”) and its subsidiaries and affiliates, including Education Management Holdings II LLC, Education Management II LLC, Education Finance III LLC, the Argosy Education Group, Inc., Argosy University of California LLC, the Art Institutes International II LLC, Brown Mackie Education II LLC, the Institute of Post-Secondary Education, Inc., and South University LLC.

³ 20 U.S.C. § 1094(a)(20).

determined changes to the compensation of [their] admissions personnel was the number of students recruited by the admissions employee during the previous twelve months.”⁴

On November 8, 2012, the District Judge in the EDMC litigation appointed a Special Master to oversee discovery disputes between the parties.⁵ The Special Master subsequently issued a series of Reports and Recommendations regarding the scope of discovery. Filed on May 14, 2013 and adopted by the District Judge,⁶ Report & Recommendation No. 2 of the Special Master (“R&R No. 2”) granted in part and denied in part Plaintiffs’ motions to compel production of documents and answers to their first set of requests for production (“RFPs”) and interrogatories (“ROGs”).⁷

Subsequently, Report & Recommendation No. 4 of the Special Master (“R&R No. 4”), issued on November 24, 2013 and adopted by the District Judge,⁸ ordered Defendants to produce “all material currently available to them regarding” four categories of documents prioritized by Plaintiffs: “(1) admissions employee emails; (2) investor communications related to the [Incentive Compensation Ban]; (3) materials relied upon with regard to the Program Participation Agreements and Defendants’ compliance therewith; and (4) materials related to Defendants’ Compensation Review Task Force[.]”⁹

Requests

In the following requests, the term “materials” refers to, without limitation, documents, reports, applications, notes, emails, voicemails, database entries, and logs, whether in paper, electronic, or other format.

I request:

1. All materials produced by Defendants to the Department in response to the following RFPs for which Plaintiffs’ motions to compel were granted in R&R No. 2:¹⁰
 - a. RFPs 47-52 (“[m]aterial regarding internal or external audits, investigations, and reviews of Defendants’ regulatory compliance efforts, including regarding regulations other than the [Incentive Compensation Ban]”);¹¹

⁴ Joint Complaint in Intervention by the United States of America, and the States of California, Florida, Illinois, and Indiana ¶¶ 15-168, 271, *United States ex rel. Washington v. Educ. Mgmt. Corp.*, No. 2:07-cv-461 (W.D. Pa. Aug. 8, 2011).

⁵ Order of Appointment of a General and E-Discovery Special Master with Preliminary Scheduling Dates, *United States ex rel. Washington v. Educ. Mgmt. Corp.*, No. 2:07-cv-461 (W.D. Pa. Nov. 8, 2012).

⁶ Memorandum of Opinion and Order of Court, *United States ex rel. Washington v. Educ. Mgmt. Corp.*, No. 2:07-cv-461 (W.D. Pa. July 23, 2013).

⁷ Report & Recommendation #2 of the Special Master, *United States ex rel. Washington v. Educ. Mgmt. Corp.*, No. 2:07-cv-461 (W.D. Pa. May 14, 2013).

⁸ Order Adopting Special Master Report and Recommendation #4, *United States ex rel. Washington v. Educ. Mgmt. Corp.*, No. 2:07-cv-461 (W.D. Pa. Dec. 10, 2013).

⁹ Report & Recommendation #4 of the Special Master at 21, *United States ex rel. Washington v. Educ. Mgmt. Corp.*, No. 2:07-cv-461 (W.D. Pa. Nov. 24, 2013).

¹⁰ Report & Recommendation #2 of the Special Master at 50-51, *United States ex rel. Washington v. Educ. Mgmt. Corp.*, No. 2:07-cv-461 (W.D. Pa. May 14, 2013); Memorandum of Opinion and Order of Court, *United States ex rel. Washington v. Educ. Mgmt. Corp.*, No. 2:07-cv-461 (W.D. Pa. July 23, 2013).

- b. RFP 85 (“any complaints made to Defendants regarding their recruiting process or alleged misrepresentations by Defendants”);¹²
 - c. RFPs 96-101 (“documents regarding Defendants’ student retention, persistence, graduation, loan default, job placement, and readmission rates”);¹³
 - d. RFP 119 (“templates for written communications between Defendants and potential students”);¹⁴
 - e. RFP 120 (“templates of scripts used by admissions employees when providing campus tours”);¹⁵
 - f. RFP 121 (“documents regarding what [Assistant Directors of Admission] may or may not tell potential students”);¹⁶
 - g. RFPs 122-25 (“any complaints by faculty members or prospective or actual students about recruiters, including any instances of alleged misrepresentations or misconduct by recruiters”);¹⁷ and
 - h. RFP 135 (“complaints by faculty members regarding Defendants’ admission and grading policies”).¹⁸
2. All materials produced by Defendants to the Department in response to ROG 18 (“[m]aterial regarding internal or external audits, investigations, and reviews of Defendants’ regulatory compliance efforts, including regarding regulations other than the [Incentive Compensation Ban]”),¹⁹ for which Plaintiffs’ motion to compel was granted in R&R No. 2.²⁰
 3. All materials produced by Defendants to the Department “regarding . . . admissions employee emails” as ordered in R&R No. 4.²¹

¹¹ Report & Recommendation #2 of the Special Master at 15, *United States ex rel. Washington v. Educ. Mgmt. Corp.*, No. 2:07-cv-461 (W.D. Pa. May 14, 2013).

¹² *Id.* at 39.

¹³ *Id.* at 23.

¹⁴ *Id.* at 22.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.* at 39.

¹⁸ *Id.* at 36.

¹⁹ *Id.* at 15.

²⁰ *Id.* at 50-51; Memorandum of Opinion and Order of Court, *United States ex rel. Washington v. Educ. Mgmt. Corp.*, No. 2:07-cv-461 (W.D. Pa. July 23, 2013).

²¹ Report & Recommendation #4 of the Special Master at 21, *United States ex rel. Washington v. Educ. Mgmt. Corp.*, No. 2:07-cv-461 (W.D. Pa. Nov. 24, 2013); Order Adopting Special Master Report and Recommendation #4, *United States ex rel. Washington v. Educ. Mgmt. Corp.*, No. 2:07-cv-461 (W.D. Pa. Dec. 10, 2013).

Fee Waiver Request

I respectfully request that the Department waive any fees associated with the processing of this request pursuant to 28 C.F.R. § 16.10(k). The Legal Services Center of Harvard Law School, of which PPSL is a part, is a non-profit organization that provides legal services at no cost to low-income individuals. This request is not made in the furtherance of any commercial interest. Rather, disclosure of the requested information is likely to contribute significantly to public understanding of the operations and activities of the government, including the Department of Education's enforcement of the Incentive Compensation Ban. Disclosure of the requested information is also in the public interest because it bears on the ability of individuals who have attended Defendants' institutions to obtain relief from their student loan debt. Through its discovery requests, the Department sought to obtain information about Defendants' recruiting practices, including misrepresentations made to prospective students and other forms of misconduct. To the extent that the requested information sheds light on these practices, it is of critical importance to individuals who took out loans to attend Defendants' institutions, as they may be able to assert borrower defenses to repayment based on the requested information.²²

I ask that you release all responsive records within 20 days, *see* 5 U.S.C. § 552(a)(6)(A)(i); 28 C.F.R. § 16.5(c). Should you deny my application for a fee waiver, please advise me of any costs associated with producing responsive records. Finally, I request that you produce records to me on a rolling basis as they become available, even if additional records may yet be identified.

Thank you very much for your attention to this request. I may be reached at the contact information listed below, should you require any clarification regarding this request.

Sincerely,



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²² *See* 34 C.F.R. 685.206(c) ("In any proceeding to collect on a Direct Loan, the borrower may assert as a defense against repayment, any act or omission of the school attended by the student that would give rise to a cause of action against the school under applicable State law."). Although the Department of Education has proposed to adopt a new federal standard for borrower defenses, this would apply only to loans first disbursed on or after July 1, 2017; the current defense to repayment standard would continue to govern defenses to repayment of loans disbursed prior to that date. *See* Student Assistance General Provisions, Federal Perkins Loan Program, Federal Family Education Loan Program, William D. Ford Federal Direct Loan Program, and Teacher Education Assistance for College and Higher Education Grant Program; Proposed Rule, 81 Fed. Reg. 116 (proposed June 16, 2016) (to be codified at 34 C.F.R. pts. 30, 668, 674, 682, 685, 686).